S.B.CIVIL WRIT PETITION No.6480/1999
RAM GOPAL & Ors. V/s STATE OF RAJ. & Ors.

6.2.2007

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri S.K. Saksena, Advocate for the petitioners.
Shri B.S. Chhaba, Dy. Government Advocate for the State.

REPORTABLE

Heard learned counsel for the parties.

This writ petition has been filed with the prayer that the respondents be directed to allot the land of Tank Bed for cultivation under the provisions of the Rajasthan Land Revenue (Allotment of Tank-Bed Lands for Cultivation) Rules, 1961 (for short "the Rules of 1961") which the petitioners have been cultivating since the time the same was allotted to them by the S.D.O., Kekri vide orders dated 7.3.1996 and 25.6.1996. A perusal of these orders reveals that the allotment was made on temporary basis for a period of three years.

Shri S.K. Saksena, learned counsel for the petitioners argued that the petitioners have been cultivating the land allotted under the aforesaid orders which is the only source of their livelihood. Khasra Girdawari of the land have been

placed on record to substantiate this assertion. It has been argued that the area in which the land is situated is drought affected area and therefore a committee headed by the Chairman of the Board of Revenue was constituted for temporary allotment of land covered by tank-bed for cultivation. On recommendation by the said committee, a decision has been taken to confer Khatedari rights on those in cultivatory possession of the land of tank bed though on temporary basis, for a period of 30 years. Reference has been made to a news-paper report to this effect published in Dainik Navjyoti in its Ajmer edition dated 23.9.1999.

Learned counsel for the petitioners referred to rules 4 and 6 of the Rules of 1961 and argued that the Government was competent to issue general direction for allotment of land of Tank-Bed over and above the provisions thereabout contained in the Rules of 1961 and the Rules of 1970. Shri S.K. Saksena, learned counsel for the petitioners also referred to amendment made in Rule 18 of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1970 (for short “the

Rules of 1970") wherein sub-clause (4) was added vide notification of the Government dated 4.1.2002 to provide for conferment of Khatedari Rights upon all those persons who were allotted land prior to 29.9.1999 and had cultivated 50% of the land in the first year of allotment and the remaining area, in the second year and their allotment has not been cancelled, if they have been cultivating the allotted land for the last three years and fulfill the other terms and conditions of allotment. No further allotment letter or renewal order has been placed on record but learned counsel for the petitioners submits that their allotment was later renewed and the petitioners are still in possession thereof. Therefore, they would be entitled to the benefit of the sub-rule (4) of the Rule 18 of the Rules of 1970.

While on the one hand, Rule 18 has been amended so as to provide for conferment of Khatedari rights by adding sub-rule (4) thereto on the persons who were allotted such land prior to 29.9.99 and their allotment has not been cancelled, if they are cultivating said allotted land for the last three

years and fulfills the other terms and conditions of allotment, on the other hand section 16(ii) of the Rajasthan Tenancy Act, 1955 (for short “the Act of 1955”) provides that notwithstanding anything contained in this Act or in any other law or enactment for the time being in force in any part of the State Khatedari rights shall not accrue in the land used for casual or occasional cultivation in the bed of a river or tank. The word 'Tank' was purposely inserted by Amendment Act No.2 of 1958.

Posed with this difficulty, Shri S.K. Saksena, learned counsel for the petitioners argued that Section 16(ii) of the Act of 1955 excludes only such land which are used for casual or occasional cultivation in the bed of a river or tank but not the land which are allotted for a particular time period. The Government has framed the Rules of 1961 so as to prescribed the manner in which the allotment of Tank-Bed lands for cultivation would be regulated. Such allotment is to be made only to a landless agriculturist by issuing proclaimation and inviting applications. Rule 7 of the Rules of 1961 provides that such allotment shall be made by

the Sub-Divisional Officer in consultation with the Advisory Committee appointed for the Tehsil under Rule 13 of the Rules of 1970. In order to arrive at the conclusion that whether or not Rule 18 of the Rules, 1970 refers to only allotment of general land or would also cover the tank-bed land, this would have to be decided by reading the said Rule 18 in its entirety. Rule 18 gives a complete scheme for conferment of Khatedari rights although sub-rule (2) of the said rule now stands deleted but sub-rules (1), (3) and (4) have to be read in harmony with each other for the present purpose. Sub-rule (1) of Rule 18 of the Rules of 1970 provides that the Tehsildar shall suo motu confer Khatedari rights upon allottees after three years of allotment provided that the allottee fulfills all the terms and conditions of allotment during this period. Sub-rule (3) provides that all persons who were allotted land on lease basis under and in accordance with notification dated 2.11.1953 and have been in continuous possession of such land shall be eligible for conferment of Khatedari rights as if such lease holders were

allotted land under the provision of these rules. Sub-rule (4) which was latter inserted by amendment made by notification dated 4.1.2002 provides that all persons who were allotted land prior to 29.9.99 and had cultivated 50% of the land in the first year of allotment and the remaining area in the second year and their allotment has not been cancelled, shall be eligible for conferment of Khatedari rights if they are cultivating said alloted land for the last three years and fulfill other terms and conditions of allotment. It would, thus, be clear that nowhere in entire Rule 18 has any specific reference been made to the lands of Tank-Bed. Rule 18 therefore merely regulates allotment of lands of general nature which is made on recommendation of advisory committee in accordance with the provisions of the Rules of 1970 regarding which Khatedari rights are confirmed. In the Rules of 1970 also allotments are made after issuing proclamation and inviting applications for such allotment. Rule 4 of the Rules of 1970 however specifically excludes the lands mentioned in section 16 of the Rajasthan

Tenancy Act, 1955 for the purpose of allotment by providing that such land shall not be available for allotment under these rules. The Rules of 1961 with regard to the allotment of tank bed land have however given a separate mechanism for issuing proclamation and inviting applications for allotment. Such allotments as per Rule 7 of the Rules of 1961 are also required to be made in consultation with advisory committee constituted under Rule 13 of the Rules of 1970 but beyond that no other rule of the Rules of 1970 has been incorporated by reference in the Rules of 1961 and further, no provision similar to the Rule 18 of the Rules of 1970 has been provided for conferment of Khatedari rights on the allottees under the Rules of 1961. Section 16(ii) of the Act of 1955 categorically bars conferment of Khatedari rights over lands of Tank-Bed.

Shri S.K. Saksena, learned counsel for the petitioner sought to make a distinction that section 16 in its clause (ii) merely excludes allotment of only such land which is used for casual or occasional cultivation and not the land

which is allotted under the Rules of 1961 for specific time period. Such an argument, with respect, proceeds on ignorance of Rule 4 of the Rules of 1970 in which the lands referred to in Section 16 for the purpose of conferment of Khatedari rights have been completely excluded. The Tank-Bed lands are always allotted for a temporary period and therefore regardless of the fact that the temporary period has not been mentioned/ specified or indicated in section 16, allotment of such land shall always be for casual or occasional cultivation. A purposive interpretation shall have been given to not only the Rules of 1961 but also Rule 4 of the Rules of 1970 and section 16 of the Rajasthan Tenancy Act keeping in view intention of the legislature not to confer Khatedary rights on the lands of tank bed. The argument that the State Government can issue general instructions for allotment of the lands of tank-bed in addition to and over and above the rules contained in the Rules of 1961 and the Rules of 1970 cannot be accepted because when there are specific set of rules available on the subject providing for a

complete prohibition for conferment of Khatedari rights on the nature of land mentioned in section 16 supra, no instructions which run contrary to the specific rules and the provisions contained in section 16 of the Act can be issued and if issued, would be liable to be treated as void to the extent of such repugnancy.

In view of the above discussion, I do not find any merit in the writ petition. The writ petition is dismissed with no order as to costs.

(Mohammad Rafiq),J.

Chauhan/